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In The
Supreme Court of the United States

THOMAS E. KEMP (Chairman, Oklahoma Tax Commission), JERRY JOHNSON (Vice Chairman, Oklahoma Tax Commission), CONNIE IRBY (Secretary-Member, Oklahoma Tax Commission), BRAD HENRY (Governor), and HOWARD HENDRICK (Director, Oklahoma Department of Human Services [on Cross-Petition]),

Cross-Petitioners,

vs.

HAROLD E. HILL, MARGARET R. AND WILLIAM F. McCRIGHT, JOHN J. McQUEEN, RITA J. MOSKOWITZ, BARBARA SANTEE, and OKLAHOMA COALITION FOR REPRODUCTIVE CHOICE EDUCATION FUND, INC.,

Cross-Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

OKLAHOMA GOVERNOR BRAD HENRY AND HOWARD HENDRICK'S CONDITIONAL CROSS-PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED ON CONDITIONAL CROSS-PETITION

Whether the *Ex parte Young* doctrine can be used to grant federal courts jurisdiction over state officials sued only in their "official capacity," when the relief requested would only affect the state's taxation and spending powers, and Congress has enacted a specific statute, i.e., the Tax Injunction Act [28 U.S.C. § 1341], that divests federal courts of jurisdiction on state taxation issues?

PARTIES TO THE PROCEEDING

Petitioners are Harold E. Hill, Margaret R. and William F. McCright, John J. McQueen, Rita J. Moskowitz, and Barbara Santee, all plaintiff-appellants in the proceedings below.

Respondents/Cross-Petitioners are Thomas E. Kemp, Jerry Johnson, Connie Irby (respectively, the Chairman, Vice-Chairman and Secretary-Member of Oklahoma Tax Commission), and Brad Henry (Governor of the State of Oklahoma), all defendants-appellees in the proceedings below sued in their official capacities.

Respondents/Cross-Petitioners, herein, are joined by Howard H. Hendrick (Director of the Oklahoma Department of Human Services) as a Conditional Cross-Petitioner.

Oklahoma Religious Coalition for Reproductive Choice Education Fund, Inc. ("ORC"), a plaintiff-appellant in proceedings below, apparently does not seek further review of any of the decisions issued below with respect to its claims, which they claim are distinct and severable from petitioner's claims, however, Respondents herein join them to this conditional cross-petition if this court grants Petitioners' Petition for Certiorari.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

No Respondent/Cross-Petitioner is a corporation. Cross-Respondent, Oklahoma Religious Coalition for Reproductive Choice Education Fund, Inc. is apparently a non-profit organization established under § 501(c)(3) of the Internal Revenue Code.

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OPINIONS BELOW

The opinion of the court of appeals is reported at 478 F.3d 1236 (10th Cir. 2007) and reproduced as Appendix A (1a-53a) in Petitioners' Petition for Writ of Certiorari. The unpublished opinion and order of the district court, No. 04-CV-0028 (N.D. Okl. August 16, 2005) is reproduced as Appendix B (54a-71a) to Petitioners' Petition for Writ of Certiorari.

JURISDICTION

The court of appeals entered judgment on March 6, 2007, and a timely-filed petition for rehearing and rehearing *en banc* was denied on April 2, 2007. (See Petitioners' Petition for Writ of Certiorari, App. C, 72a-73a). On June 14, 2007, Justice Breyer extended Petitioners' time within which to file a petition for *certiorari* to and including August 30, 2007. Pursuant to Supreme Court Rule 12(5) Respondents are filing this Response to that Petition for Certiorari and Conditional Cross-Petition within 30 days from the date this case was placed on the docket. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

The Tax Injunction Act, 28 U.S.C. § 1341, provides that "[t]he district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and

efficient remedy may be had in the courts of such State." (Petitioners' App. D, 74a).

The challenged tax scheme, 47 O.S. §§ 1104 through 1136, is reproduced in Appendix A, to Petitioners' Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Petitioners, all Oklahoma taxpayers claiming ownership in motor vehicles registered in the State of Oklahoma, filed their First Amended Complaint on August 19, 2004, complaining that Oklahoma's motor vehicle license plate statutes violate their Constitutional rights. (Response App. pgs. 1-59). Collectively calling themselves "Motorist," they alleged in their First Amended Complaint that they "interpret the phrase 'choice in family planning' to mean a woman's freedom to choose among all available reproductive options both before and after conception." (Response App. pg. 6, para. 16). They further alleged:

> 17. Motorist Plaintiffs wish to express themselves in this manner because they believe a special license plate is a unique means of promoting their views about reproductive rights.
>
> 18. Motorist Plaintiffs also seek a special license plate expressing support for choice in family planning because other motorists are currently permitted to use special license plates to (*a*) express contrary views about

> reproductive rights, and (*b*) raise money for organizations promoting those contrary views. (Response App. pg. 6).
>
> They brought this action pursuant to 42 U.S.C. § 1983 alleging four claims:

Claim One, alleges Oklahoma's statutes, violate their First and Fourteenth Amendment rights because they are "presumptively unconstitutional" in that it grants both "the Oklahoma Legislature and Governor unbridled discretion and lacks viewpoint neutral standards for determining which Oklahoma motorist will be permitted access to a State-created speech forum" and that "every application of the Statutory Scheme creates an impermissible risk that viewpoint discrimination will lead to suppression of protected expression." (Response App. pg. 53);

Claim Two, alleges the statutes violate their First and Fourteenth Amendment rights "because the Oklahoma Legislature engaged in viewpoint discrimination when it authorized the expression of only certain views about reproductive rights in a State-created speech forum" and that "[t]he Statutory Scheme is not narrowly drawn to achieve a compelling or any other governmental interest justifying the Oklahoma Legislature's failure to amend [the statutes] to allow the [Oklahoma Tax Commission] to issue Family Planning Plates." (Response App. pg. 54);

Claim Three, alleges the statutes violate the Motorists' Due Process protection accorded by the Fourteenth Amendment because they "condition access of

Oklahoma motorists to a State-created speech forum on a statutory amendment by the Oklahoma Legislature and Governor authorizing the desired self-expression" again claiming the statutes are not narrowly drawn to achieve a compelling governmental interest, and that "it does not adequately notify Oklahoma motorists of what, if any, additional self-expression would be permitted or prohibited in a State-created speech forum." (Response App. pgs. 54-55);

Claim Four, alleges the statutes violate the Equal Protection Clause of the Fourteenth Amendment "because it allows for, and in fact has resulted in, impermissible viewpoint discrimination among otherwise similarly-situated Oklahoma motorists in permitting access to a State-created speech forum" and that the statutes are not narrowly drawn to achieve a compelling or any other governmental interest justifying a distinction between allowing certain Oklahoma motorists to express themselves on special license plates and refusing to allow other Oklahoma motorists to do the same." (Response App. pgs. 55-56).

The Motorists requested the district court grant them declaratory and injunctive relief. (Response App. pgs. 57-58).

Petitioners were joined in their lawsuit by an organization called Oklahoma Religious Coalition for Reproductive Choice Education Fund, Inc. ("ORC"), a non-profit organization established under § 501(c)(3) of the Internal Revenue Code. (Response App. pgs. 6-8). They have not asked this Court for Certiorari

review because the Tenth Circuit remanded their claims (i.e., Claims Five and Six) back to the district court for further determination. (Petitioners' App. pgs. 36a-53a). Respondent/Cross-Petitioners join them in this Appeal on Conditional Cross-Petition filed separately asking this Court to review the Tenth Circuit's decision regarding ORC's claims.

ORC claims to be "a statewide coalition of Christian, Jewish, and other religious organizations supporting choice in family planning, regardless of income, culture, race, class, gender or ethnic origin." (Response App. pg. 7, para. 22). Like the Motorists, ORC alleged they "interpret the phrase 'choice in family planning' to mean a woman's freedom to choose, according to her own faith, traditions or religious and moral beliefs, among all available reproductive options both before and after conception." (Response App. pg. 7, para. 23). ORC claims it "provides various services to assist pregnant women who wish to engage in choice in family planning." (Response App. pg. 7, para. 24). They also claim to "engage in various activities to express support for choice in family planning," and that they "would like to apply for funding pursuant to 47 O.S. § 1104.6 to (a) create a program that would provide direct support to pregnant women who have decided that adoption is the appropriate option given their circumstances, and (b) support counseling and associated training about adoption as a family planning option." (Response App. pg. 8, para. 28). ORC alleges under:

Claim Five, that Oklahoma's tax funding part of the state license plate scheme "violates the First and Fourteenth Amendments . . . by impermissibly denying [them] the ability to apply for and receive money from the Choose Life Fund solely on the basis of [their] involvement and association – through other funding sources – with abortion activities." (Response App. pg. 56).

Claim Six, alleges that the funding statute "violates [their] Equal Protection" rights "because it allows for, and in fact has resulted in, impermissible discrimination among otherwise similarly-situated non-profit organizations regarding their eligibility for disbursements from the Choose Life Fund." (Response App. pg. 57).

ORC also asked the Court for declaratory and injunctive relief. (Response App. pgs. 57-58).

All of the Defendants moved to dismiss the First Amended Complaint on a variety of grounds, including, lack of venue, Eleventh Amendment immunity, lack of ripeness, lack of standing, failure to state claims upon which relief could be granted, and the Tax Injunction Act. On August 16, 2005, the district court issued an Opinion and Order dismissing the First Amended Complaint holding that it lacked jurisdiction pursuant to the Tax Injunction Act [28 U.S.C. § 1341] to decide Plaintiffs' First Amended Complaint. (Petitioners' App. B). Plaintiffs then appealed to the Tenth Circuit.

In the interim, between the time when the district court rendered its judgment and the time before the Tenth Circuit entered its decision, the Oklahoma Legislature (with the Governor's approval), enacted 47 O.S. § 1135.7 which now allows any motorist (including Petitioners) the opportunity to express any viewpoint on a special license plate under certain conditions and to fund initiatives that support their viewpoint (possibly including abortion rights). (Petitioners' App. A, pgs. 136a-139a). This fact alone, may render Petitioners' claims moot.

The Tenth Circuit's Decision

The Tenth Circuit affirmed the district court's decision regarding the Motorists' claims – one through four, but remanded ORC's claims five and six to the district court for further determination, ruling the district court improperly applied the *Ex parte Young* doctrine pursuant to this Court's decision in *Verizon Maryland, Inc. v. Public Service Commission of Maryland*, 535 U.S. 635 (2002). (Petitioners' App. A).

PETITIONERS' AND ORC's CLAIMS

Both the Motorists and ORC are challenging the same statutes. The Motorists are asking for the same access to what they catagorize as a state created forum in order to express their viewpoint on the State's license plates. While ORC is challenging the funding part of that statute, demanding the federal

courts to force the state to expend state tax money for a program the State has decided is not in the best interests of its citizens. Both claims raise serious *federalism* concerns. Because both are challenging the same statutory scheme Cross-Petitioners are asking this Court to accept its Cross-Petition conditioned on this Court's acceptance of Petitioners' Writ for Certiorari in case number 07-297.

REASONS FOR GRANTING CONDITIONAL CROSS-PETITION

Respondents/Cross-Petitioners believe the Tenth Circuit mis-applied this Court's decision in *Verizon Maryland, Inc. v. Public Service Commission of Maryland*, 535 U.S. 635 (2002) in remanding ORC's claims five and six back to the district court. If this Court decides to grant Petitioners' Certiorari review, then Respondents would seek a conditional cross-petition joining ORC to this appeal on the following issue:

Whether the *Ex parte Young* doctrine[1] can be used to grant federal courts jurisdiction over state officials sued only in their "official capacity," when the relief requested would only affect the state's taxation and spending powers, and Congress has enacted a specific statute, i.e., the Tax Injunction Act [28 U.S.C.

[1] *Ex Parte Young*, 209 U.S. 123 (1908).

§ 1341], that divests federal courts of jurisdiction on state taxation issues?

Long before the Tax Injunction Act was enacted, this Court held that:

> "No court of equity will . . . allow its injunction to issue to restrain [state officers collecting state taxes], except where it may be necessary to protect the rights of the citizens whose property its taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, . . . before the aid of a court of equity can be invoked." *Dows v. City of Chicago*, 11 Wall. 108, 110, 78 U.S. 108, 110, 20 L.Ed. 65 (1871).

Not only did the district court not have jurisdiction to grant ORC its requested relief, but ORC also lacked the standing to be granted the relief they are requesting. ORC has no right to the state funds they are requesting. They want the federal courts to either give them a share of the pie or else deny everyone else their share.

The Tenth Circuit held that ORC was requesting the following relief:

> (i) for the district court to issue "a declaration that [prohibits] the distribution of monies from the Choice Life Assistance Program based on abortion-related speech [because it] is unconstitutional";

> (ii) for the district court to issue "an injunction to stop the Defendants from enforcing 47 Okla.Stat. § 1104.6(C)(4) and (D), which prohibits distribution to such organizations"; and
>
> (iii) for this Court to "[sever] . . . those subsections from the rest of the statute."
>
> (10th Cir. Opinion, Petitioners' App. A, page 47).

The Tax Injunction Act "and the decisions of [the Supreme Court] which preceded [the Act], reflect the fundamental principle of comity between federal courts and state governments that is essential to 'Our Federalism,' particularly in the area of state taxation." *Fair Assessment in Real Estate Assn., Inc. v. McNary*, 454 U.S. 100, 103, 102 S.Ct. 177, 179, 70 L.Ed.2d 271 (1981).

The Tax Injunction Act is the embodiment of *federalism* and *comity*. As such, not even the legal fiction of *Ex parte Young* should be allowed to overcome a State Official's sovereign immunity, especially when Congress has emphatically denied federal courts jurisdiction on issues of local taxation. See, e.g., *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 71-75, 116 S.Ct. 1114 (1996) (When Congress has enacted a system whereby the federal government can penalize the States for violations of federal law and taken steps to prevent future violations of federal law, there is no need for the federal courts to use the *Ex parte Young* doctrine to accomplish the same objective.). The Tax Injunction Act denies federal

courts jurisdiction as long as there is a "plain, speedy, and efficient state remedy" available to the taxpayer. 28 U.S.C. 1341. Congress' intent in enacting that Act was to deny federal courts jurisdiction over local taxation issues. It represents their belief that federal courts should first let the States decide their own taxing and spending issues. Claimants can still appeal to this Court once the State administrative and judicial processes have been exhausted. (28 U.S.C. § 1257). Such reasoning satisfies both *federalism* and *comity* concerns by allowing the States to first address their own taxation issues, and at the same time preserves a claimant's rights through an appeal to this Court, if necessary. Granting the States the first opportunity to address taxation issues can many times avoid Constitutional issues by a mere interpretation of the State's own statutes or rules.

The "*federalism*" principles expressed in the Tax Injunction Act are merely an acknowledgment of a State's self-governing rights reflected in the Tenth Amendment. That Amendment prohibits the national government from exercising non-delegated powers that will infringe on the lawmaking autonomy of the states; it provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X. "The Tenth Amendment was intended to confirm the understanding of the people at the time the Constitution was adopted, that powers not granted to the United States were reserved to the States or to the

people." *United States v. Sprague*, 282 U.S. 716, 733 (1931).

The Tenth Circuit's analysis of ORC's claims missed an important aspect of *Ex parte Young*. Even "prospective equitable relief" in the form of injunctive relief has its limitations under § 1983 when a state or a state official is being sued. In granting equitable relief, a Court cannot exceed its authority under § 1983 and interfere with the State's exercise of its internal affairs, because such interference is contrary to the principles of federalism. *Rizzo v. Goode*, 423 U.S. 362, 372, 96 S.Ct. 598, 605, 46 L.Ed.2d 561 (1976). In assessing the scope of a federal court's equitable power, this Court observed that principles of federalism, "which play such an important part in governing the relationship between federal courts and state governments, . . . have applicability where injunctive relief is sought . . . against those in charge of an executive branch of an agency of state or local governments." *Id.* at 380, 96 S.Ct. 598. This Court has admonished federal courts granting equitable relief against state actors to be "constantly mindful of the 'special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law.'" *Id.* at 378, 96 S.Ct. 598 (quoting *Stefanelli v. Minard*, 342 U.S. 117, 120, 72 S.Ct. 118, 96 L.Ed. 138 (1951)).

Respondents/Cross-Petitioners understand that this Court held in *Verizon Maryland, Inc. v. Public Service Commission of Maryland*, 535 U.S. 635 (2002) that a federal court should not linger over the question

of whether "special" or other sorts of sovereign immunity interests are at stake before analyzing the nature of the relief sought, and that judges should "proceed immediately in every case to the straightforward inquiry whether the relief requested is properly characterized as prospective or is indeed the functional equivalent to impermissible retrospective relief." *Id.* However, even a straightforward inquiry under *Ex parte Young* to ORC's claims five and six reveals that the state officials sued in this case should have been dismissed on jurisdictional grounds.

If the purpose of the *Ex parte Young* doctrine is to prevent a state official from enforcing an unconstitutional statute or to prevent that official from violating the constitutional rights of an individual, without (at the same time) infringing on the sovereign immunity of the State, then ORC's claims in this case are the "functional equivalent" to a claim against the State of Oklahoma and the Tenth Circuit mis-applied the doctrine to ORC's claims. A key component of the *Ex parte Young* doctrine is: Who is the action really against? *Ex parte Young*, 209 U.S. 123, 149-156 (1908). If the suit is the ***functional equivalent*** to a suit against the State, then the doctrine should not be applied. *Id.* Any possible relief the district court could grant in this case under ORC's claims five and six would be the functional equivalent to a suit against the state of Oklahoma, because it would affect the **administration of the state's taxing and spending powers**. To allow a district court to use the *Ex parte Young* fiction in this case granting it jurisdiction

over state officials sued only in their official capacity would allow it to circumvent the Tax Injunction Act by doing indirectly what it would otherwise not be allowed to do directly. Thus any relief the district court could grant would be contrary to the Tax Injunction Act.

Even though the Tenth Circuit questioned Justice Kennedy's decision in *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 117 S.Ct. 2028 (1997), as not garnering the majority of the Court, Respondents/Cross-Petitioners believe Justice Kennedy did get some aspects of the *Ex parte Young* doctrine correct. Respondents/Cross-Petitioners believe *Ex parte Young's* "functional equivalent" inquiry relates just as much to a court's "Who is the case really against" element, as it does to the "prospective equitable relief" element. Therefore the "straightforward inquiry" under *Ex parte Young* that the Tenth Circuit should have asked was: Will the relief requested affect a ***State function*** or a State official's enforcement of an unconstitutional law? *Ex parte Young*, at 151-156. If it would affect a ***State function*** such as the administration of the State's taxation powers or infringe on the state's spending powers, then the legal fiction of *Ex parte Young* should not be applicable.

ORC's requests for relief would affect only the State's finances. For instance, "(i) [a] declaration that [prohibits] the distribution of monies from the Choice Life Assistance Program based on abortion-related speech [because it] is unconstitutional" (Petitioners' App. A, pg. 47), would be the **functional equivalent**

of a direct action against the state disrupting the state's finances and prohibiting it from exercising its taxing and spending powers for *the general welfare and protection of its citizens.* ORC's request for "(ii) [a]n injunction to stop the Defendants from enforcing 47 Okla.Stat. § 1104.6(C)(4) and (D), which prohibits distribution to such organizations" (Petitioners' App. A, pg. 47) would be the **functional equivalent** of an action against the state because it would both deny the state the ability to fund a state program for the *general welfare and protection of its citizens* and also force the state to fund a program its elected officials chose not to fund, thus infringing on the state's Tenth Amendment rights. Finally, a request for the Court to "(iii) [sever] . . . those subsections from the rest of the statute" (Petitioners' App. A, pg. 47) would again be the **functional equivalent** of a direct action against the state because it would deny the state the ability to fund a program designed for the *general welfare and protection of its citizens.*

Therefore, since Congress has expressly denied federal courts jurisdiction to decide local taxation claims, not even the legal fiction of *Ex parte Young* should be allowed to grant federal courts jurisdiction over state officials sued in their official capacity when the relief requested would affect the state's ability to tax and spend its own revenue.

CONCLUSION

This Court should deny Petitioners' Petition for Certiorari because the Tenth Circuit's decision that the Tax Injunction Act denied the district court jurisdiction to hear their claims was correct. In the event this Court does grant Petitioners' Petition, then Respondents' request this Court to also grant their Cross-Petition because the Tenth Circuit's decision concerning *Ex parte Young* was not exactly correct, and that court should have dismissed ORC's claims as well.

Respectfully submitted,

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Okl.Const. art. XXV, § 1 Relief and care of needy aged and disabled persons – Co-operation with Federal Plan.

In order to promote the general welfare of the people of the State of Oklahoma and for their protection, security, and benefit, the Legislature and the people by initiative petition are hereby authorized to provide by appropriate legislation for the relief and care of needy aged persons who are unable to provide for themselves, and other needy persons who, on account of immature age, physical infirmity, disability, or other cause, are unable to provide care for themselves; Provided, the Legislature or the people by initiative petition, are further authorized, in co-operation with and under any plan authorized by the Federal Government for State participation, to provide by appropriate legislation for the relief and care of aged or needy persons.

The levy of taxes, other than ad valorem taxes, necessary to carry into effect legislation enacted pursuant thereto, is hereby authorized.

Okl.Const. art. XXV, § 2 Department of Public Welfare.

For the purpose of effectively administering and carrying into execution all laws enacted pursuant to the authority granted in Section One hereof, there is hereby created a Department of Public Welfare. Said Department of Public Welfare is hereby charged with the duty and responsibility of faithfully administering and carrying into execution all laws enacted pursuant

to the authority granted in Section One hereof and shall perform such other duties as may, from time to time, be prescribed by law.

Okl.Const. art. XXV, § 3 Oklahoma Public Welfare Commission.

The Department of Public Welfare shall be under the control of a commission to be known as the Oklahoma Public Welfare Commission, composed of nine members appointed by the Governor and selected on the basis of recognized interest in and knowledge of the problems of public welfare. Each member of the Commission shall be at least thirty years of age, shall be a citizen of the United States, and shall have been a qualified elector of Oklahoma at least five years next preceding his or her appointment. Members of the Commission or any person employed by an working under direction of said Commission may be of either sex. Immediately upon the taking effect of this Article, the Governor shall appoint the members of said Commission for terms of office as follows: One member for a term of one year, one member for a term of two years, one member for a term of three years, one member for a term of four years, one member for a term of five years, one member for a term of six years, one member for a term of seven years, one member for a term of eight years and one member for a term of nine years. Except as above designated, the term of office of the members of said Commission shall be nine years or until their successors are appointed and qualified. The Governor shall

designate one member of the Commission as chairman. Members of the Commission shall receive no compensation for their services but shall be allowed necessary traveling and other expenses actually incurred while in the performance of their official duties. The Governor shall have the power to fill vacancies on the Commission for the remainder of the unexpired term.

No member of said Commission shall be subject to removal by the Governor, but any such member shall be removable only in the manner and for the causes now provided in Article 2, Chapter 20, Oklahoma Statutes 1931, for the removal of officers not subject to impeachment. The venue of actions for removal shall be in Oklahoma County.

Okl.Const. art. XXV, § 4 Director of Public Welfare.

It shall be the duty of the Commission to select a Director of Public Welfare, who shall not be a member of the Commission, and who shall serve as the executive and administrative officer of the Department of Public Welfare. The Director shall be appointed wholly on the basis of ability, training and experience qualifying him or her for public welfare administration. The Director shall serve at the pleasure of the Commission. The salary of the Director shall be fixed by the Commission.

The Commission shall formulate the policies, and adopt rules and regulations for the effective administration of the duties of the Department. All executive and administrative duties and responsibilities of the Department shall be discharged by the Director, subject to the approval of the Commission. Subject to the control of the Commission, the Director shall have the power and it shall be his duty to employ personnel of the Department, prescribe minimum standards of qualifications for such personnel and conduct examinations before employment, formulate salary schedules for classified service based upon training, experience and general ability of persons selected for positions in the Department or any institutions or activities under the supervision of the Department.

Okl.Const. art. XXV, § 5 Force and effect of legislation contemporaneously adopted.

Any legislation under the authority herein granted, adopted contemporaneously with the adoption of this amendment, shall have the same force and effect as if same had been initiated and adopted subsequent to the adoption of this amendment.

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10 Okl.Stat., § 22.2 – Creation of the Investing in Stronger Families Act

A. This section shall be known and may be cited as the "Investing in Stronger Oklahoma Families Act".

B. It is the intent of the Oklahoma Legislature in enacting the Investing in Stronger Oklahoma Families Act to provide assistance to guardians of children, adoptive parents and other "created families", to assist such guardians, adoptive parents and families to assume permanent custody of children in need of safe and permanent homes, and to enhance family preservation and the stability of these homes.

C. For purposes of implementing the Investing in Stronger Oklahoma Families Act, the Department of Human Services shall collaborate with appropriate local, state and federal agencies and private entities to develop by December 31, 2001, a comprehensive strategic state plan for investing in stronger families.

D. The comprehensive strategic state plan shall:

1. Set a goal to annually increase the number of programs for "created families" which will increase safe and permanent homes for children who are not in the custody of the Department but unable to reside with their biological parents and encourage and preserve the adoption or guardianship of and other legal custody arrangements for such children;

2. Develop and implement a statewide public awareness campaign which will inform preadoptive homes, adoptive homes and other persons desiring to obtain guardianship or other legal custody of a child, of the programs, grants and other assistance available to them;

3. Identify public and private resources, both within the agencies subject to the provisions of this section and within the state and within the communities;

4. Provide for coordination and collaboration among related efforts and programs;

5. Provide for contracts or agreements with public and private entities for utilization of identifiable financial resources from federal, state, local and private resources and coordinate those resources to fund-related services; and

6. Apply for grants and matching monies to assist in the implementation of the Investing in Stronger Oklahoma Families Act including, but not limited to, funds derived from the "Respect Life – Support Adoption" license plates.

E. As part of the development and implementation of the comprehensive strategic plan, the Department shall, as funds are available and using existing available state resources, develop an information database consisting of data on existing programs serving families who have taken on the responsibility of providing children with safe and permanent homes. In developing the information database, the Department shall coordinate with the Children's Coordinated Data System developed by the Oklahoma Commission on Children and Youth.

F. The Legislature hereby encourages the establishment of family resource assistance that links, federal, state and local resources and programs and

that creates collaborative and interorganizational partnerships between state governmental agencies and private and nonprofit entities and attorneys. Such agencies and private and nonprofit entities shall include, but not be limited to:

1. The Department of Human Services;

2. The State Department of Education;

3. The Oklahoma Department of Career and Technology Education;

4. The Oklahoma Department of Commerce;

5. The Oklahoma Employment Security Commission;

6. The Oklahoma Health Care Authority;

7. The State Department of Health;

8. The Commission on Children and Youth;

9. The State Department of Mental Health and Substance Abuse Services;

10. The Oklahoma Department of Corrections;

11. The Oklahoma State Regents for Higher Education;

12. Community action agencies;

13. Local and municipal groups;

14. Substate planning groups;

15. Religious and charitable organizations;

16. Private child placement entities;

17. Public or private foundations; and

18. Representatives of the courts and attorneys who practice in adoption.

G. The Department shall enter into collaborative and interorganizational partnerships as necessary to provide assistance to guardians, adoptive parents and other "created families".

H. Within available funding specified by this section, the Department may provide created families with:

1. Case management services;

2. Flexible funds to enable the relatives, guardians, adoptive parents and other created families to meet unusual or crisis expenditures, including but not limited to, making housing deposits, utility deposits, or purchasing beds, clothing and food;

3. Child care and after school care;

4. Respite care;

5. Transportation;

6. Counseling;

7. Support groups;

8. Assistance in accessing parental child support payments;

9. Aid in accessing food stamps, Social Security and other public benefits;

10. Assistance for establishing a guardianship, adopting or obtaining custody of the child;

11. Available volunteer attorney services;

12. Mediation/family group conferencing; and

13. Community-based services and state or federal programs serving guardians of children, adoptive families and other created families.

I. The Department of Human Services may provide any services necessary to effectuate the purposes of this sec tin by contract with any person or with any public or private entity.

J. The Department of Human Services shall, pursuant to the provisions of the Administrative Procedures Act, promulgate any rules necessary to implement the provisions of this section.

K. For purposes of the Investigating in Stronger Oklahoma Families Act, the Department shall, from funds available, develop, publish, and distribute an informational brochure for guardians, adoptive parents and other created families who provide full-time care for children. The information provided under the program authorized by this section may include, but is not limited to, the following:

1. The benefits that may be available to children and created families pursuant to this section providing full-time care;

2. The procedures to access the created families program;

3. A list of support groups and resources located throughout the state; and

4. Such other information deemed necessary by the Department.

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56 Okl.Stat., § 161 – Definitions

(a) When used herein, the term "State Department" shall mean the State Department of Public Welfare;

(b) The term "Commission" shall mean the Oklahoma Public Welfare Commission;

(c) The term "county board" shall mean the county board of public welfare;

(d) The term "Director" shall mean the Director of Public Welfare;

(e) The term "applicant" shall mean a person who has applied for assistance under this act;

(f) The term "recipient" shall mean any person who is receiving assistance under the terms of this act;

(g) The term "assistance" shall mean money payments to, medical care in behalf of, or any other kind of benefit to or for recipients who receive aid under the provisions of this act.

(h) The singular shall include the plural and the masculine shall include the feminine;

(i) The term "county department" shall mean the county board of public welfare, and such other personnel as may be necessary for the efficient performance of the duties of the county department;

(j) The term "Department" shall mean the State Department of Public Welfare and the county department of public welfare.

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56 Okl.Stat., § 162 – Duties and Powers of Commission

The Commission shall have the power and it shall be its duty to:

(a) Select a Director of Public Welfare who shall not be a member of the Commission and who shall serve as executive and administrative officer of the Department. The Director shall be appointed wholly on the basis of ability, training and experience qualifying him or her for public welfare administration. The Director shall serve at the pleasure of the Commission. The salary of the Director shall be fixed by the Commission;

(b) Formulate the policies and adopt rules and regulations for the effective administration of the duties of the Department;

(c) Require and set the amount of the bond for employees within its discretion;

(d) [Deleted by Laws 1939, p. 86, §2]

(e) Cooperate with the Federal Social Security Board, created under Title 7 of the Social Security Act, enacted by the Seventy-Fourth Congress and approved August 14, 1935, or other like agency created by Congress, in any reasonable manner as may be necessary to qualify for federal aid to states in providing assistance to needy persons in conformity with the provisions of this act, including the making of such reports in such form and containing such information as the Social Security Board or other similar federal agency may from time to time require, and comply with such provisions as the Social Security Board, or other similar federal agency may find necessary to insure the correctness and verification of such reports; and

(f) Publish an annual report, not later than four (4) months after the close of each fiscal year, showing for such year the total amount paid to needy persons in this state under the provisions of this act, and the total number of such needy persons given assistance, classified by age, sex, race, residence of persons assisted, and such other particulars as may be deemed advisable. Such report shall be presented to the Governor.

(g) Present to the Federal Social Security Board a new plan for old-age assistance, aid to dependent children and aid to needy blind.

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56 Okl.Stat., § 162.1 – Additional Names for Department of Public Welfare, Welfare Commission and Director

(a) The Department of Public Welfare shall also be known as, and may perform official acts and transact official business in the name of, Department of Human Services.

(b) The Oklahoma Public Welfare Commission shall also be known as, and may perform official acts and transact official business in the name of, the Commission for Human Services.

(c) The Director of Public Welfare shall also be known as, and may perform official acts and transact official business in the name of, the Director of Human Services.

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56 Okl.Stat., § 162.1a – Additional Names for Department of Welfare, Public Welfare Commission and Director of Public Welfare

Whenever the name of Department of Institutions, Social and Rehabilitative Services, or Commission for Institutions, Social and Rehabilitative Services, or Director of Institutions, Social and Rehabilitative Services appears in any law, contract or other document, it shall be deemed to refer to Department of Human Services, Commission for Human Services, or Director of Human Services, respectively.